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ABSTRACT

Conflict over authority between the California Legislature and the University of California is examined. While the University of California has broad constitutional autonomy over academic matters, organization, and governance, the legislature has certain authority over the university under its own constitutional and budgetary powers. Attention is focused primarily on a particular conflict between the California Legislature and the University of California: the attempt to enact legislation to require the university to give faculty members access to their personnel files, including confidential letters of recommendation on which academic employment, tenure, and promotion decisions are based. In addition, four major conflicts between the university and the legislature that occurred between 1969 and 1978 are addressed: legislative response to campus disturbances (1969), establishment of a new state-level coordinating agency for higher education (1973), constitutional amendment for legislative control over competitive bidding procedures at the university (1976), and budget control language establishing criteria for faculty tenure and promotion (1977). Finally, implications for policy are briefly considered. (SW)

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THE LEGISLATURE AND THE UNIVERSITY:

CONFLICT IN HIGHER EDUCATION

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This paper was presented at the Annual Meeting of the Association for the Study of Higher Education held at the Conrad Hilton Hotel in Chicago, Illinois, March 12-14, 1984. This paper was reviewed by ASHE and was judged to be of high quality and of interest to others concerned with the research of higher education. It has therefore been selected to be included in the ERIC collection of ASHE conference papers.

Conflicts over authority between public research universities in the United States and their state legislatures are inevitable. These two social institutions perform functions or provide resources essential to each other yet they have differing and often conflicting values, interests and perspectives. Public research universities educate future elites, but they are also seen as barriers to social and economic mobility for those unable to gain entrance. They perform research and services instrumental to the development of both technological advances and a better understanding of human society, but they also conduct research which may pose public health hazards, lead to social dislocations, or inappropriately advance private interests. Since state legislatures are the bodies elected to allocate public monies and secure the public peace, health and safety, what public universities do is of crucial importance to their legislatures. At the same time, public universities in the U.S. depend on their state legislatures for most of their operating budgets. Public universities are also subject to a range of state statutes, regulations and coordination.

Despite these differing perspectives, state legislatures have historically accorded public universities, particularly research universities, substantial autonomy over their affairs. Legislatures have deferred to university expertise over the conduct of complex academic programs, and they have recognized

that university autonomy helped to shelter teaching, learning and social criticism from external influence. On the other hand, the United States has a strong tradition of democratic oversight of institutions using public monies and serving public functions. All state legislatures are granted by their state constitutions broad "police powers" - and responsibilities - to provide for the public health, safety and welfare, as well as broad authority over the appropriation of state monies.

As a result of these conflicting demands and traditions, conflicts have always occurred between university and state, although these conflicts have waxed and waned, partly in response to external influences, such as war or economic depression, or to change in personalities among the chief actors in each organization. Nevertheless, in recent years, as public universities are increasingly caught up in external issues that bear on general public concerns and as state legislatures become more assertive, many state legislators are pressing for greater legislative controls over university matters over which universities have previously been accorded autonomy. As a result, conflicts between universities and legislatures over who has or should have authority have grown.

This paper examines conflict over authority between the California Legislature and the University of California. Between these two bodies there is a somewhat special relationship that I

have labeled a "limited-authority relationship". Like public universities in at least nine other states, the University of California has broad constitutional autonomy over academic matters, organization and governance which substantially limits legislative authority over the University. Nevertheless, the Legislature has certain authority over the University under its own constitutional and budgetary powers. In this limited-authority relationship, then, the University is partially but only partially subordinate to the Legislature.

This situation leads to the major questions of this study:

- Given both their conflicting values and interests and the limited-authority relationship between the California Legislature and the University of California, how do these two important social institutions act in conflicts between them?[1]

- What are the outcomes of these conflicts and what influences them?

- What are the longer-term consequences of these conflicts for both the continued independence of the University and its effective responsiveness to public needs?

This paper focuses primarily on a particular conflict between the California Legislature and the University of California. The conflict was over legislative attempts to enact legislation to require the University to give faculty members access to their personnel files, including confidential letters of recommendation on which academic employment, tenure and promotion decisions are based. The conflict pitted legislative responsibility to ensure due process and non-discrimination of employees in large organizations against both the need for University control to protect the quality of academic personnel and the authority of the University over academic matters and procedures.

In addition, I refer to four other major conflicts between the University and the Legislature to draw conclusions and policy implications regarding University-legislative conflicts. These five conflicts span the decade 1969 to 1978 and involve issues common to conflicts between universities and legislatures in many states, such as the balance between teaching and research, university accountability to the public and the use of budgetary powers to gain policy objectives.

Conflict between state legislature and state university is not only inevitable but valuable. Because these two entities embody different critical values, the lack of some conflict between them would indicate that one value has submerged the

other - that legislative oversight is not being tempered by professional expertise and independence from legislative control or that university authority is not tempered by accountability to the body elected to represent the public. My aim, then, is not to determine how to eliminate all such conflict but to highlight the sometimes dysfuctional ways in which legislatures and universities act in conflicts and to assist university and state policy makers in determining appropriate strategies and policies for dealing with issues of university autonomy, legislative authority and public responsibility.

Although this study is limited to one state and a university system within that state, its findings are likely to be applicable at least in part to conflicts between other organizations in similar limited-authority relationships - between legislatures and constitutional universities in other states and perhaps between bodies such as the U.S. Congress and federal regulatory commissions (e.g., the Federal Trade Commission).

Data analysis for the study of the five conflicts was based on 90 in-depth interviews with University and legislative officials and staff and on review of University and legislative records and files for each case. Because California law requires the University to make its records publicly available, with certain exceptions, access was obtained to large amounts of internal memoranda. Legislative files were somewhat less complete

(since legislators are more likely to discard files on bills after a few years), but legislative staffs gave me access to their files without, apparently, any prior screening of the materials.

THE UNIVERSITY OF CALIFORNIA AND THE CALIFORNIA LEGISLATURE

Most public universities in the United States are created by statute and are subject to legislative controls (if enacted) in a number of areas including, for example, statutes related to admission and discipline of students, hiring, firing and tenure of faculty, civil service regulations, academic program offerings, state purchasing requirements, and many other areas. Although typically state legislatures in fact do not intrude except marginally in institutions' academic affairs, they often do impose detailed line itemization of state budget allocations and exercise controls over non-academic areas such as procedures governing non-academic employees, purchasing, construction, planning and auditing - areas which may indirectly affect academic programs.

By contrast, Article IX, Section 9, of the California Constitution vests in the Regents of the University of California virtually exclusive control over the University's internal affairs. The section states in part:

> The University of California shall constitute a public trust, to be administered by the existing corporation known

> as "The Regents of the University of California", with full powers of organization and government, subject only to such legislative control as may be necessary to ensure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statue ...
>
> ... Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise ...

Furthermore, the constitution explicitly declares that there must be no political interference in the affairs of the University or its administration:

> The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs ...

In addition to its constitutional autonomy, the University also has access to other important sources of power or independence, many common to other research universities. These include the tradition of institutional autonomy, its monopoly over expertise, prestige, a large and powerful alumni network, and ability, at least for research activities, to tap non-state funding sources.

The California Legislature does have certain authority and powers over the University of California, particularly its power to allocate funds to the University and its constitutional "police power" to control activities that centrally affect the public welfare. However, in most areas it has little or no authority to regulate directly University activities, including

those which legislators may perceive as having an important bearing on public concerns.

FOUR CONFLICTS IN BRIEF

In order to give a fuller (although still abbreviated) picture of the process of conflict between the University and the Legislature, I will only briefly mention four of the cases which form the basis for the conclusion before presenting the final case in greater detail.

1. Legislative response to campus disturbances (1969). In 1969, following campus disturbances at the University of California and throughout the nation, California legislators introduced close to 100 bills and other measures intended to control and punish disruptive and unruly individuals on the campuses or to "get back" at the University for permitting the disturbances to occur. Many of these measures would have intruded heavily on University autonomy and academic freedom. For example, some bills would have forced the University to expel or dismiss students, faculty or staff convicted of vaguely defined acts of "campus disruption". Other measures would have reduced or eliminated the University's constitutional autonomy imposed intrusive budget control language, or significantly reduced budget allocations to the University. While the University administration

perceived the measures as attacks on essential University independence, legislators countered that legislative authority and responsibility required them to protect society from lawlessness and disorder, including that occurring on college campuses. Perhaps surprisingly, despite tremendous public outcries against the disruptions, the legislation eventually enacted did not noticeably lessen the University's autonomy over students, faculty or programs; it did, however, give campus administrators somewhat greater discretion to take actions against disruptions.

2. Establishment of a new state-level coordinating agency for higher education (1973). Legislative efforts to establish a new coordinating agency with strong program and budgetary powers over public higher education in California arose out of the gradual growth of anger and frustration by a number of legislators over what they perceived as institutional dominance of the existing weak coordinating agency and, more generally, the University of California's unresponsiveness to legislative concerns and demands. Two legislators were the principal agents of the legislation. The first had been a long-time critic of the University and sought a change in coordination as part of a total reexamination of public higher education in California. The second legislator had been angered by what he saw as the University administration's unwillingness to provide information necessary for legislative budgetary decisions; he seized on the coordination legislation as a means (as he said) to "rattle the

cages" at the University, to demonstrate legislative displeasure. Because early versions of the coordination bill would have given de facto control over academic matters to an agency subordinate to the Legislature - most importantly, veto power over the funding of new educational programs at the University, the University administration fought the measure vigorously. In 1973, legislation was enacted to establish a new, somewhat stronger, but still advisory agency, the current California Postsecondary Education Commission.

3. Constitutional amendment: legislative control over competitive bidding procedures for the University of California (1976). Even minor amendment of the constitutional provisions which define the University's "full powers of organization and government" has generally been considered by University officials as a threat to the University's autonomy since, University officials have reasoned, further and more serious amendments might then become easier to enact. Amendment of the University's constitutional provisions had occurred only three times previously and never against formal University opposition. In 1976, against University opposition, the Legislature passed (and the electorate adopted) a constitutional amendment making the University subject to state regulations on competitive bidding procedures for construction contracts, purchases of goods and services, and sales of real property. The amendment was advocated as a simple matter of holding the University accountable to accepted

standards of fair business and labor practices. In fact, however, the impetus for the legislation was an unrelated matter. It concerned a legislator's long-simmering anger over University real estate transactions in one corner of the state (La Jolla) which had gone against the interests of some of the legislator's local constituents and supporters. The legislator was able to utilize the lobbying efforts of construction groups throughout the state to get the amendment passed. Once the amendment was adopted, the Legislature passed legislation regulating the University's competitive bidding practices which largely (though not entirely) reiterated policies already in effect at the University.

4. Budget control language[2] establishing criteria for faculty tenure or promotion (1977). The University of California's emphasis on research to the alleged neglect of teaching, especially of undergraduates, has long troubled many legislators. In 1977, the legislative Assembly adopted an amendment to the state budget bill which stipulated that, unless the University set aside 22 faculty positions for which tenure and/or promotion were to be based primarily on teaching ability, the University could not spend any of nearly $700 million of its appropriation. Such budget control language, which would have conditioned almost all the state appropriation for the University's operating budget on a matter involving a handful of individuals, would have been unprecedented. In the University's view,

the measure would have unconstitutionally imposed legislative criteria for the tenure or promotion of (some) academic personnel, a matter at the heart of University autonomy. Legislative supporters of the measure argued that the Legislature had the responsibility to ensure that the publicly funded University provide a good education for its students. The six-member joint Senate-Assembly Conference Committee on the budget bill killed the tenure-criteria measure - as well as an unprecedented number of other budget control language and supplemental language items dealing with academic matters and strongly opposed by the University. However, legislative attempts to find ways to compel or induce the University to increase its support for teaching have continued.

CONFLICT OVER ACCESS TO CONFIDENTIAL PERSONNEL FILES (1978)

For several years during the 1970s, a small group of faculty activists, their legislative supporters, the University administration, and other involved parties jockeyed for position, compromised, then jockeyed for better positions over a succession of legislative bills to give academic employees at the University of California access to materials in their personnel files, including confidential letters of reference.

The conflict pitted two divergent sets of values. On one side were issues of quality and University independence from the Legislature on procedures for academic employment. The University of California, like many and probably most research universities, uses confidential peer review as the principal means for reaching decisions on the recruitment, tenure and promotion of academic personnel. Unless confidentiality is guaranteed, the University has argued, reviewers may be less than candid or may refuse to write reviews at all. Without confidentiality, the University's ability to select the most qualified academic personnel may be undermined. In addition, procedures surrounding the selection and retention of academic employees have traditionally been assumed to be academic matters in which universities, particularly constitutional universities, should hold exclusive authority.

On the other side were issues of due process and questions of discrimination. The University Council of the American Federation of Teachers (AFT), the small union of faculty and other academic personnel at the University which strongly advocated open-access legislation, argued that the University's system of confidentiality had permitted individuals to be fired on the basis of unsubstantiated charges or prejudices while it prevented the individuals from ascertaining the true reasons for adverse action. The AFT argued that lecturers, minorities and women had been particularly subject to discriminatory actions hidden by confidentiality.[3]

In February 1977, California Senator David Roberti introduced SB 251, a bill which required the University to give its non-Senate academic personnel (such as lecturers, professional researchers and librarians) complete access to all materials in their personnel files, including the names of those writing evaluations of them. The bill also required the University to release "comprehensive statements" of the substance of confidential evaluations to members of the University's Academic Senate (that is, assistant, associate or full professors) but did not require release of the names of the evaluators or exact copies of their letters.

Roberti acknowledged that he introduced SB 251 largely as a favor for the AFT, which not only wrote the bill but also directed the efforts to pass it. David Brody, then President of the University of California AFT, asserted in an AFL-CIO news bulletin:

> This is a civil liberties issue. A person who is denied tenure at U.C. may have the right to file a grievance but it is a hollow right unless you have the right to see the material in your personnel file.[4]

Senator Roberti saw the matter as one of "workers'" rights, rather than as an academic matter, and he was willing to lend his name to this effort. In a press release on SB 251, Roberti stated, "It is grossly unfair to jeopardize a worker's career simply because of some erroneous information tucked away in their employment records".[5] However, Roberti, who was concurrently working hard for the passage of an omnibus privacy/access bill

(SB 170) with much broader impact than SB 251, made only limited efforts on behalf of SB 251. In order to prevent University opposition to the omnibus bill, Roberti inserted into SB 170 compromise language which the University had agreed to the previous year; the language permitted a certain degree of confidentiality in employee evaluation, a matter which was only a small aspect of the omnibus bill. However, in SB 251, the limited, special bill, Roberti did not include the compromise language.

The University administration urged Roberti to drop SB 251, which it called "unnecessary, undesirable and ... in all probability unconstitutional".[6] When Roberti not only refused to do so but charged, not entirely accurately, that the University was retreating from an agreement not to oppose such language, the University's chief legislative advocate declared:

> ... we see no reason to accept willingly something which is deleterious, totally unnecessary and seeks to overturn an overwhelming consensus growing out of extensive deliberation within the University. Moreover, such legislation suggests that the potential for abuse of personal records in the University is greater than in all other government agencies, a suggestion which we believe to be absurd on its face.[7]

In April, SB 251 came before the Senate Education Committee for a vote. The AFT contacted every Senate Education Committee member and sent the committee chairperson an analysis of its arguments for the bill. John Henning, the executive secretary-treasurer of the state's powerful California Federation of

Labor, AFL-CIO, and a University Regent, sent letters to each committee member in which he declared organized labor's strong endorsement of the bill.[8] On the other side, University administrators and faculty members sent letters opposing the bill to the committee members. However, University representatives saw only a few of the committee members - perhaps because they believed the bill would be tabled, perhaps because the administration was also busy fighting budget control language proposals in the Assembly. On April 13, the Senate Education Committee passed SB 251 by a vote of 7-2. The bill moved to the full Senate, where similar efforts were taken. On June 1, the full Senate passed SB 251 by a vote of 28-7. SB 251 was then sent to the Assembly Judiciary Committee.

In August, a complex exchange between SB 251 and SB 170 (then in the Assembly Ways and Means Committee) took place. Roberti, upon pressure from the University, amended SB 170 to give the University and other agencies slightly wider latitude in the use of comprehensive summaries of confidential material. However, Roberti amended SB 251 to give Academic Senate members (the one group on whom SB 251 had permitted confidential files and, according to University administrative and academic offers, the group for whom confidential evaluations were the most critical) nearly complete access to their files. SB 251, as revised, required the University to furnish Academic Senate members complete copies of letters of reference or other materials in

their files with only the names of the letter-writers deleted. Other changes reduced administrative discretion even further. Perhaps not coincidentally, the changes were made after SB 251 had passed the Senate (traditionally more receptive to the University's autonomy arguments) and had moved to the less tradition-bound and more pro-labor Assembly.

In the Assembly, the revised SB 251 nevertheless had difficulty gaining passage. Roberti prevailed upon the chairperson of the Assembly Judiciary Committee to postpone hearings on the bill three times, while he and the AFT sought to muster legislative support for the bill. The AFT persuaded a number of statewide organizations to make public their support for SB 251. These included the northern division of the American Civil Liberties Union, the California State Employees Association, and the California Women in Higher Education. The University's student lobby, which concluded that access to files would enable faculty members, and therefore students, to assess the importance given to teaching in tenure decisions, reaffirmed its support for the bill. Individual University faculty members and employees also volunteered their support.

University officials also stepped up efforts to kill the revised bill. The University lobbyists and campus officials tried - with only limited success - to contact the members of the Assembly Judiciary Committee during the legislative recess. In

September 1977, the University administration also began to implement a revision of its own policies on employee access to personnel files. The revised policy closely followed procedures which had been incorporated into SB 170, the omnibus privacy/access bill which had recently been enacted into law. Although some campuses had already provided such access, the revised policy required all campuses to provide academic employees substantial information about what was in their personnel files. The administration hoped that the revised policy would reduce legislative interest in imposing access requirements on the University. In addition, sympathetic legislators submitted requests for the legislative counsel's opinion on the constitutionality of SB 251. The legislative counsel's response, in a November 1977 opinion, advised that two provisions of SB 251 were unconstitutional because they placed unique requirements on the University not imposed on other sectors of state public employment.

In response to the legislative counsel's opinion, Roberti amended SB 251 slightly in March 1978. However, he did not alter the bill's requirements that personnel files be opened completely to non-Senate academic personnel and with only name deletion to Academic Senate members. Roberti also tried unsuccessfully to get the University's Board of Regents to disavow the University administration's opposition to SB 251.

At this juncture, members of the University with liberal credentials moved to try to counter AFT claims that SB 251 was a liberal cause, to plead for time to give SB 170 and the University's revised policy a chance to be assessed, and to argue that governmental regulation of these matters would create more harm than good. For example, Regent Stanley Sheinbaum, chairperson of the Southern California ACLU division, telephoned Assemblymember Maxine Waters during a Judiciary Committee hearing on SB 251 and successfully convinced her to oppose the bill. As a result of these actions, the chairperson of the Assembly Judiciary Committee again postponed the vote on SB 251, scheduled for March 30.

Extensive pressures for and against the bill - by University administrators, Academic Senate chairpersons, and the non-union faculty associations, on one side, and by the AFT, the ACLU, individual faculty members, liberal newspapers, and some state officials, on the other - continued throughout April and May. On May 30, a new bill version, to meet the legislative counsel's opinion that the bill was still unconstitutional, was introduced. In addition, in a slight concession to the University's concerns for confidentiality, the amended bill permitted the University to delete the affiliation (as well as the name) of an evaluator of an Academic Senate member. On May 31, acting with unusual speed at the request of Roberti's staff, the legislative counsel issued a new opinion that SB 251 was now constitutional.

The bill's now presumed constitutionality plus the power of the arguments for employee protection and due process overcame the resistance to SB 251. On June 1, 1978, exactly one year after the Senate had passed the bill and forwarded it to the Assembly, the Assembly Judiciary Committee passed SB 251 by an 8-1 vote. On August 9, the Assembly Ways and Means Committee passed the bill by a 12-2 vote. The full Assembly passed SB 251 on August 17, by a 65-5 vote, and returned the bill to the Senate for concurrence. Despite the bill's marked revision in the Assembly, the Senate on August 22 concurred with the Assembly amendments. However, in a state where final legislative vote tallies are usually quite lopsided, the 22-10 vote reflected substantial senatorial disapproval of the bill. SB 251 was enrolled and sent to the Governor the following day.

The battle to get the Governor to sign or to veto SB 251 was hard-fought. The many interested parties in the matter wrote letters to the Governor's office, made telephone calls, and tried to speak personally to the Governor about the matter. University President David Saxon urged Governor Brown "in the strongest possible terms" to veto SB 251, which, he argued, was instigated "at the urging of a tiny minority which has failed to persuade its own colleagues within the University" of the measure's desirability.[9] Roberti, the AFT, other faculty members, the University student lobby, the ACLU, the California Federation of Labor and, at the direct urging of Federation executive Henning,

local labor Federation chapters, urged Brown to sign the bill in order to provide due process and to eliminate discriminatory practices in the University. The AFT, which had been refused a personal audience with the Governor, sent a group of about 20 supporters to Sacramento to demonstrate for the bill.

On September 30, 1978, only hours before the bill would have become law without his signature, the Governor, to the surprise of both the AFT and the University administration, signed SB 251. It was scheduled to take effect on January 1, 1979.

Enactment of the legislation did not, however, end the matter. The University filed suit in Los Angeles Superior Court in December 1978, to have the statute declared invalid and unenforceable. In the suit, the University declared that SB 251 had impinged on the University's "constitutional and academic freedom to determine who shall teach and conduct research". It declared that the bill had illegally and unreasonably singled out the University for especially restrictive regulation and that the statute, though still not in effect, had already caused "irreparable harm" to the University by affecting the candor of letters of reference.[10] President Saxon, the chairperson of the University's Academic Senate, and other University administrators and academic leaders submitted personal declarations to the court to state their opposition to SB 251. "Friend of the court" briefs on behalf of the University were filed by the Council of

University of California Faculty Associations (a faculty organization closely linked to the campus Academic Senate) and by the American Council on Education, a national association whose membership includes most U.S. colleges and universities.

The California Attorney General, named as the defendant in the University's suit, filed a cross-complaint against the University in January 1979. The Attorney General argued that SB 251 "reflected a statewide legislative policy favoring access by employees to those records which their employers rely upon in making personnel decisions about them". He asked the court to compel the University to comply immediately with the law's access requirements.[11] Although Senator Roberti and his staff played no role in the court litigation, the AFT continued to be heavily involved in the matter. The AFT provided the Attorney General's office with background information on the several years of privacy/access bills, arguments in support of the statute, and names of individuals and organizations willing to submit declarations.

The court challenge of SB 251 took more than one and one-half years. During this time, the University continued to provide employees only summaries of letters of reference (as required by its own revised policies) but informed evaluators that a judicial ruling might eventually compel the University to release the full texts of their letters. Finally, in August 1980,

Los Angeles Superior Court Judge Roberta Ralph ruled. Basing her decision on a California Supreme Court ruling (San Francisco Labor Council v. Regents of the University of California, 1980) which had come down only a few months earlier, Judge Ralph declared SB 251 "unconstitutional as beyond the police power of the Legislature as limited by Article IX, Section 9, of the California Constitution".[12]

The Attorney General did not appeal the court's decision. Neither Senator Roberti nor any other legislator pursued general statewide legislation to require the release to employees of confidential letters of reference on them. The AFT did not, however, give up the fight. Rather, it decided to try a different tack. In August 1981, the AFT filed a private class-action suit against the University, on behalf of six University employees, in which it charged that denial of employee access to personnel files violated state constitutional guarantees for the protection of privacy. Although the suit is still pending, its chances appear slim.

Although the University never implemented SB 251, the several years of legislative efforts to enact files-access legislation altered the University's academic personnel procedures. Largely because of legislative and gubernatorial pressures, the University modified its personnel policies to require each campus to provide individuals greater access to information in

their files and greater safeguards in the tenure/promotion process than they had received on most campuses prior to 1977. However, these rights are more limited than they would have been under SB 251.

The University's constitutional autonomy ultimately was of critical importance in this case. The University's constitutional status was insufficient to keep the Legislature from enacting SB 251 in the face of other pressures and values, although the bill remained stalled until the legislative counsel opined that the bill was in fact constitutional. Nevertheless, because the University could and did challenge the bill in court, its constitutional status ultimately prevented the Legislature from exercising control over the University's personnel records. Indeed, the California Supreme Court decision cited by Judge Ralph reconfirmed that the University's constitutional autonomy extends far beyond academic matters. Whether or not these court decisions will make legislators more reluctant to pass bills regulating the University where their constitutionality is unclear is unknown. The decisions have not inhibited individual legislators from introducing bills which the University claims are unconstitutional. In the case of the files-access legislation itself, however, the outcome is clear: unless new AFT efforts are successful or new statewide regulations are enacted (neither currently likely), the University will continue to have undiminished authority over academic procedures.

CONCLUSIONS

1. University and legislative actors do not - and cannot - define precisely who has authority to do what. Nevertheless, neither side has difficulty deciding whether or not the other party has violated or ignored its authority.

University and legislative actors make these decisions, first, by relying on the implicit consensus which in fact covers most interactions between the two parties. The legislature continues to accord very great autonomy to the University in academic affairs and in most internal management matters. The University accepts legislative authority in matters clearly related to statewide standards for public health, safety and equality of treatment and in the setting of broad policy directions for higher education. This consensus tends to break down over issues at the margins of the two organizations' central concerns - issues which intersect academic functions and public policy matters.

Second, when consensus fails, the parties use what Wildavsky has termed "calculation aids"[13] - rules of thumb to simplify decision making - to decide whether authority has been violated. For legislators, a principal calculation aid is what might be called the "tip-of-the-iceberg" assumption. Because the University's operations are complex, and because its constitutionality

enables it to avoid detailed disclosure of its internal operations, legislators know very little about it. Consequently, they tend to judge the University's performance by what little they do learn. They assume, for example, that "horror stories" that come to their attention are just the visible tips of widespread but largely invisible abuses. In the files-access case, for example, instances of individual University employees who appeared to have been discriminated against were brought to legislators' attention. Many legislators voted for the bill because they assumed that the instances reflected widespread discrimination or abuse in the University. For the University administration, the principal calculation aid is the status quo. The University administration tends to assume that legislative measures which would regulate matters previously left to University control are illegitimate intrusions on University autonomy.

2. Because the Legislature and the University are in a "limited-authority" relationship, the Legislature does not have sufficient authority to compel the University to act, and the University does not have sufficient independence to ignore the Legislature's demands. In addition, the division of authority between them is unclear and contested. They compensate for their incomplete authority by finding ways around it: (1) they control what they can and attack vulnerable areas; (2) they interpret or reinterpret an issue to place it under their authority or to

mobilize external support for their position; (3) they appeal to higher authorities.

First, the organizations use their authority in one area to gain de facto control over a second area in which they do not have direct authority. For the Legislature, control over budget allocations is a powerful tool for attempting to gain the University's acquiescence in matters over which the University has constitutional autonomy. In the tenure-criteria conflict, for example, the legislative actor attempted to force the University to institute teaching-based tenure positions, a matter which the Legislature had no authority directly to regulate, by linking those positions to the University's entire budget allocation. Although many observers believed that the measure, if enacted, would have been rejected by the courts as unconstitutional, nevertheless, the attempt to use the Legislature's budgetary clout was made. Moreover, the Legislature has enacted - and the University has acceded to - fairly extensive budget control language for expensive and high-public-interest health professions programs, even though the Legislature probably could not enact separate statutes with the same effect.

The University, too, controls certain elements as a means to retain control in a broader area when its authority is limited. For example, in the files-access conflict, the University revised its own access policies as a means to reduce internal grievances

and thereby reduce legitimization for the bill. In the coordination conflict, the University administration pressured student leaders not to support the coordination bill.

Actors also attack vulnerable areas unrelated to their real concerns in order to pressure the other party to take action in a second area. In the coordination conflict, for example, a legislator seized on growing legislative support for revising and strengthening the coordinating agency as a means to pressure the University to be more "responsive" in providing budgetary information.

Second, Legislature and University reinterpret a matter where authority is ambiguous or contested so that it clearly falls under their authority. In the campus disturbances case, for example, many legislators inserted into their bills the declaration that the bills were "necessary for the immediate preservation of the public peace, health or safety". Legislative and University actors also link their actions or objectives to widely held social values in order to mobilize external support. For example, the legislator in the competitive bidding conflict translated his interests into norms of fair business and labor practices and accountability to taxpayers, and proponents of the files-access legislation linked it to the values of due process and non-discrimination. Conversely, the actors redefine the other party's actions and motives as contrary to those same social

values, and they tend to exaggerate or misinterpret the other's actions.

Third, when other means fail, legislative and University actors appeal to higher authorities to grant additional authority or to confirm autonomy. Actors turned to the electorate in the competitive bidding conflict and to the courts in the files-access conflict when they had failed in the legislative arena. In California, actual appeal to the higher authority of the court is a last resort since, although the constitution's ambiguity makes the court's decision uncertain, that decision could have ramifications for authority far beyond the issue being litigated. More often, the University threatens to appeal to the courts if a measure is not dropped or modified. Often that threat is enough to get the bill killed or weakened.

3. When legislative or University actors are unable to attain their objectives by indirect, compensatory strategies, they sometimes respond irrationally, taking inappropriate actions or venting their frustrations against irrelevant but available targets. Animal behaviorists call this "displacement activity".[14]

In the campus disturbances conflict, the impetus behind many of the bills and measures was simply to retaliate, to "get back" at the University by attacking vulnerable University areas and functions, without expecting the measures to have any impact on

campus disorders, either directly or indirectly. Legislators also attack other, less constitutionally protected institutions, i.e., the California State University, when they cannot regulate the University of California. In the campus disturbances conflict, the State Senate passed tougher, more intrusive measures against the state colleges than against the University. (However, the State Assembly leadership saw to it that these bills were killed.) The University, which remains partially dependent on the Legislature, similarly attacks targets which do not have power over it. Rather than publicly attack the motives of the legislative author of a measure it opposes, the University administration may disparage the motives and actions of the measure's non-legislative supporters, as it did in the competitive bidding and files-access conflicts.

University and legislative behaviors in conflicts, reflecting the constraints placed on them by their "limited-authority" relationship, are summarized in the chart.

4. Only when powerful interest groups actively labored for legislative measure was the University, itself a powerful interest, unable to defeat or substantially weaken the measures.

In three of the five cases examined - the campus disturbances, coordination, and tenure-criteria conflicts - the University was able to defeat or largely disarm legislative

BEHAVIORS IN CONFLICTS DUE TO THE LIMITED-AUTHORITY RELATIONSHIP

Compensatory Strategy	By Legislature (Quasi-superior)	By Both	By University (Quasi-subordinate)
Control where one can; attack the vulnerable	1. Use control of one area, especially the budget, to obtain de facto control of another area		
	2.	Secure control of information	
	--Obtain information about the other		--Conceal, filter, or distort information
	3. Use grievances or support of factions within other organization to legitimate actions		Resolve or reduce internal grievances Prevent internal disputes from being made public
	4.	Coopt members of the other organization	
	5. Pressure the other through third parties		
	Threaten action		Promise action, make anticipatory responses
	6.	Create diversions	
Reinterpret the issue	7.	Link actions or objectives to social values and norms	
	--Due process, fair play, etc.		--Professional expertise
	8.	Exaggerate, misinterpret, and misrepresent the other's motives and alleged authority violations	

(continued)

BEHAVIORS IN CONFLICTS . . . (continued)

Compensatory Strategy	By Legislature	By Both	By University
	9.	Use ambiguity of authority to claim greater authority, to avoid constraining definitions, and as a bargaining chip	
	10. Find "horror stories" to justify actions (Use "tip-of-iceberg" beliefs)		
	11. "Prepare the ground": re-introduce measure year after year or impose it first on less autonomous institution		
	12.	Negotiate an agreement on authority division	
Appeal to higher authority	13.	Appeal or threaten to appeal to higher authority (the electorate or the courts)	
	14. "Pass the buck"		Oppose measures "for the record"
* * *

measures which would have reduced its autonomy. In the other two cases, however, organized interest groups actively supported the measures, providing resources and legwork to build the case for the measures, keeping tabs on proposed amendments to ensure that their interests were not stripped away, and using their political clout to make legislators listen. In addition, but probably of lesser importance, the measures in these two cases became identified with basic social values - fair practices, non-discrimination, due process. These factors offset the otherwise dominant influence of the University's own influence. The constitutional amendment was adopted, and the access-to-files legislation enacted.

5. Even in the two cases where the University "lost", the University's constitutional autonomy limited the legislative control actually imposed.

In the conflict over access to personnel files, for example, the legislation was eventually enacted after a bitter struggle and with the extensive support and direction of organized labor groups. However, the legislation was ruled unconstitutional by the California courts, and no further similar legislation has been enacted.

Nevertheless, under pressure from the Legislature, changes in University policies and actions, in line with legislative

objectives, occurred following the conflicts. A more aggressive, independent and influential coordinating agency exists. University employees can now learn in some detail the substance of letters in their personnel files, although barriers to obtaining that information remain if a department chairperson is unwilling to provide it. Tougher University policies for dealing with those who disrupt campus activities are in effect, although significantly harsher penalties do not appear to have been meted out.

The future poses greater potential for legislative actions that will reduce University autonomy, yet the University's ability to utilize its independence and resources suggests that losses in the University's autonomy, if any, will be relatively small.

6. Conflicts are never really "resolved".

The enactment or defeat of each measure shifts consensus on who has authority in a matter. Thus, the University accepts the legitimacy of a more independent coordinating agency, and the Legislature confirms that state-level coordination of higher education will be advisory. Yet, because the issues in conflict are not resolved to both parties' satisfaction, each conflict "resolution" becomes the starting point for a new round of conflict, although the issues may be placed on the "back burner" for a while. Often, the fight is continued in a different arena,

as when the AFT changed tactics to press for employee access to personnel files on the basis of existing constitutional provisions. Or the issues themselves may be redefined.

Ultimate impacts of the conflicts are uncertain, since other factors may intervene. The Legislature's interest in seeing that the University meets certain standards of accountability ebbs and flows. The force of personalities changes. Severe fiscal constraints may alter the Legislature's willingness to let the University determine its own priorities. Finally, each particular conflict takes place within the broader context of overall, ongoing University-Legislature relations.

IMPLICATIONS FOR POLICY

Several implications for policy emerge from the ways in which University officials and legislators perceive and respond to conflicts. Although the study is based on relations between one university and one state legislature, these implications are likely to be relevant in other states where similar relationships lead to similar perceptions and responses.

1. Because University officials and legislators use simplified criteria to identify violations of authority, they may overreact to the situation at hand. Simple rules-of-thumb do not

adequately take into account the complexity of the University which may make some abuses inevitable, even if overall the actions of the University community are appropriate. Nor do they acknowledge the continuing reluctance of most legislators to infringe on the University's basic academic functions.

2. By avoiding clearer definitions of legislative-University authority, the University may enable the Legislature more easily to encroach on University territory. On the other hand, a "fuzzy" authority line may enable each side to claim more authority and it may even reduce some overt conflicts, since it gives the parties the flexibility to make minor adjustments to meet new conditions without losing face.

3. Because legislative and University actors often use "proxy" issues when the actual matters in conflict are too politically sensitive to discuss openly or when direct legal remedies are unavailable, underlying issues and values may be left unaddressed. As a result, important policy decisions may be made through non-decision or as a side effect of other decisions.

4. In California, as elsewhere, both internal University constituencies and external interest groups have become more willing to appeal to the Legislature to resolve grievances with the University's administration and Board of Regents. Because the pressures exercised by organized interest groups may offset the

University administration's influence in the Legislature, these groups' involvement increases the chances not only that legislative measures opposed by the University administration will be introduced but that some of these measures will be enacted.

Footnotes

1 I speak in this paper of how the Legislature and the University "act". Organizations, of course, do not themselves act; the people within them act. Nevertheless, because the members of an organization tend to follow ways of responding to situations that have been institutionalized within that organization, speaking of organizations as actors is a useful "shorthand convention". In addition, when I speak in this paper of the University, I am referring primarily to the University's systemwide administration. Several groups, particularly the faculty and the Board of Regents, have very considerable power within the University. However, the University administration is the unit which presents the official University position in legislative hearings or other interactions with the Legislature, coordinates daily operations of the overall institution, and develops most of the policies, directions and positions the overall institution will take.

2 Budget control language is the attachment of mandatory conditions for the use of state monies, such as a requirement that a certain amount must or must not be used for a specified purpose or in a specified way.

The University and the Legislature dispute just what budget control language the Legislature may constitutionally impose on the University.

3 David Brody, President, University of California American Federation of Teachers (AFT), statement, University of California Board of Regents, Committee on Finance, Minutes, June 15, 1978.

4 Quoted in "Senate Panel to Act on U.C. 'Open Files' Bill Next Week", California AFL-CIO News, March 6, 1977.

5 Roberti, press release, February 7, 1977.

6 Lowell J. Paige, University of California Governmental Relations Office, letter to Senator David Roberti, March 16, 1977.

7 Paige, letter to Roberti, March 25, 1977.

8 "Senators Urged to Vote for U.C. 'Open Files' Bill", AFL-CIO News, April 8, 1977

9 Saxon, letter to Governor Edmund G. Brown, Jr., August 25, 1978.

10 Regents of the University of California, Plaintiff, vs. California Office of Information Practices [and] Evelle J. Younger, Attorney General of the State of California, Defendants, Complaint for Declaratory Relief -- Education Code Section 92612, filed in Superior Court of the State of California for the County of Los Angeles, December 18, 1978.

11 George Deukmejian, Attorney General of the State of California, Defendant and Cross-Complainant, vs. Regents of the University of California, Plaintiffs and Cross-Defendants, Notice and Motion for Preliminary Injunction, January 19, 1979.

12 Superior Court of the State of California for the County of Los Angeles, Regents of the University of California vs. George Deukmejian, Attorney General of the State of California, Summary Judgment by Court No. C 266242, August 21, 1980.

13 Aaron Wildavsky, The Politics of the Budgetary Process (Boston: Little, Brown and Co., 1964).

14 N. Tinbergen, "The Curious Behavior of the Stickleback", Scientific American, 187 (December 1952), 22-26.